

THE EFFECTIVE DATE OF THIS ORDINANCE IS JUNE 24, 2004

ORDINANCE NO. 04-10-354

OPINION, FINDINGS AND ORDINANCE
OF
BOARD OF COUNTY COMMISSIONERS
OF
FREDERICK COUNTY, MARYLAND

RE: APPLICATION OF MONOCACY VENTURES, LLC
REZONING CASE NO. R-02-1

OPINION/FINDINGS

Monocacy Ventures, LLC filed this application to rezone 395.7 acres of land, more or less from Agriculture (A) to Planned Unit Development (PUD), all as more fully described in the record. The property is located on the west side of Ed McClain Road, north of Maryland Route 80 in the Urbana Planning Region.

The staff of the Frederick County Planning Commission recommended approval of the proposed PUD zoning and concurred with the 21 conditions recommended by the Planning Commission. The maximum land use density recommended by the Planning Commission staff is based on the project proposal to consist of 1,100 dwelling units on the 395.7 acres. This calculates to be a gross PUD density (including the open space) of 2.8 dwelling units per acre. The proposed dwelling mix is 800 single family detached dwellings, 151 single family attached units and 149 MPDU's (Moderately Priced Dwelling Units) attached units.

Based on all the evidence submitted in this case, the Board makes the following specific findings of fact (in addition to the findings above) on each of the matters mentioned in Md. Code Ann., Art. 66B, § 4.05(a):

1. **POPULATION CHANGE:** The current population of the one-mile neighborhood delineated in the Staff Report is 532. With a potential for 1,100 dwellings, the development could have a population of 3,190 based on an average household size of 2.9 people per household for the Urbana Region. However, since the development would be restricted to people 55 years of age or older, household size would likely be 2 people per household or less, which would produce a maximum population of 2,200.

2. **AVAILABILITY OF PUBLIC FACILITIES**

A. **SCHOOLS**

Since the development is proposed to be restricted to people 55 years of age or older, it would not have a direct impact on school enrollments. The County's Adequate Public Facilities Ordinance (APFO) currently exempts projects for "housing for older persons" from the school test.

B. **FIRE AND RESCUE SERVICES**

The site is approximately 1 ½ miles from the Green Valley Volunteer Fire Company. This is well within the 3 – 4 mile range for service in suburban areas. Funding was approved in the County's FY 2003 – 2008 Capital Improvement Program (CIP) for an expansion of this fire station.

C. **POLICE SERVICE**

The Frederick County Sheriff's Office and the State Police provide police protection. The current FY 2004 – 2009 CIP includes a proposed Sheriff's Substation to be constructed as an addition to the Green Valley Fire Station. The Substation is projected to open in 2008.

D. LIBRARIES

The nearest library is the main facility in downtown Frederick. A branch library is proposed to be located in the Urbana town center in FY 2005.

E. PARKS AND RECREATION FACILITIES

The proposed PUD would have 130 acres of open space. The development would be required to provide a minimum of 30% of its gross area for green area totaling 119 acres for this site. The open space within the PUD would be maintained by a homeowners association and not be available for use by the general public. The applicant is proposing a golf course on the adjoining 280 acres that is to remain zoned Agriculture and is not the subject of this PUD request. The golf course would be open to the public. The applicant is also proposing to dedicate 80 – 100 acres of land along Bush Creek to the County for public parkland use. This 80 – 100 acres is part of the PUD request. The nearest public parks are located in Urbana and Kemptown with both being approximately 4 – 5 miles from the site.

F. WATER AND SEWER

The entire site is designated W-5, indicating water service in 7 – 20 years. The northern most parcel of the site is designated S-4, indicating sewer service in 4 – 6 years while the other two parcels are designated S-5, service in 7 – 20 years. Sewer service is proposed to be provided by way of the Bush Creek Interceptor Middle Phase that would extend the sewer line along Bush Creek from its current terminus at Tabler Run to Monrovia. This interceptor would replace the interim Monrovia wastewater treatment plant (WWTP). The County's FY 2004 – 2009 CIP identifies this project as being entirely funded by developers. Sewer service will also be dependent on available treatment capacity at the new McKinney WWTP Phase 1, which is scheduled for completion in late 2006. Three CIP water projects must be constructed to provide service for this development. The East County Water Distribution Systems Phase 4 is proposed for FY 2005/2006. The New Design Water Transmission Main proposed for FY 2005/2006 will be needed to provide the connection between the Potomac River and the East County Distribution System. An expansion of the New Design Water Treatment Plant is proposed for FY 2005/2006.

3. PRESENT AND FUTURE TRANSPORTATION PATTERNS:

A. EXISTING SITE ACCESS CHARACTERISTICS

The site has approximately 5,200 feet of frontage along Ed McClain Road. Ed McClain Road is approximately 18 – 20 feet wide with grass shoulders. The proposed Phase I Plan for the PUD shows the only access to the site being a connection to Ed McClain Road at the southern corner of the site. A realignment of Ed McClain Road, shifting its intersection with Maryland Route 80 approximately 175 feet to the west is also proposed. This realignment is intended to improve sight distance at this intersection.

B. EXISTING TRAFFIC VOLUMES ON ADJOINING ROADS

Traffic volumes in 2000 on Ed McClain Road ranged from 553 vehicles per day at the south end to 607 vehicles per day at the north end. Traffic on Maryland Route 80 west of Maryland Route 75 were approximately 7,750 vehicles per day in 2002. Traffic volumes on Maryland Route 75 north of Maryland Route 80 were approximately 5,850 vehicles per day in 2002.

C. POTENTIAL TRAFFIC GENERATION FOR PROPOSED USE

As an age restricted development, the expected vehicle trip generation would be less than for a conventional residential development. A traffic impact study would be prepared as part of the Phase II PUD review.

D. COMPREHENSIVE PLAN DESIGNATIONS FOR ADJOINING ROADS

The 1993 Urbana Region Plan designates Ed McClain Road as a collector with a 60 foot right-of-way. The Urbana Region Plan also shows a new collector road connection between Ed McClain Road and Maryland Route 75. Maryland Route 75 is designated as a major arterial and Maryland Route 80 is designated as a minor arterial. The 1993 Urbana Region Plan shows a realignment of Maryland Route 75 to create a four-way intersection with Maryland Route 80.

4. COMPATIBILITY WITH EXISTING AND PROPOSED DEVELOPMENT FOR THE AREA.

A. EXISTING LAND USES IN THE NEIGHBORHOOD

A portion of the site is still in active agricultural use while the remaining lands are in fallow grass fields. Each of the three parcels includes a farmhouse residence and outbuildings. Adjoining the property to the west is the Whiskey Creek Golf Course. To the east are residences along the north and south end of Ed McClain Road. Further east are several small subdivisions along Maryland Route 75 in the vicinity of Weller Road. The adjoining properties to the north and south are in agriculture use or otherwise undeveloped.

B. SUBDIVISION ACTIVITY IN THE NEIGHBORHOOD

Subdivision activity within the one-mile neighborhood delineated in the Staff Report has been fairly limited. There are currently 16 lots available in 5 subdivisions. There are 2 proposed subdivisions, 75-80 Dragway and Frederick Properties located between Ed McClain Road and Maryland Route 75. Both are currently proposed as active adult developments with an age restriction. These two subdivisions together total 230 single family detached dwellings. These projects are awaiting water/sewer prior to receiving preliminary subdivision approval.

C. LAND PRESERVATION ACTIVITY IN THE NEIGHBORHOOD

One agricultural preservation district is located within the one-mile neighborhood. This is located on the north side of Bush Creek and adjoins the portion of the site that is to remain agriculture. This district was created in 1985 and has sold its development rights to the State.

D. CULTURAL RESOURCES IN THE NEIGHBORHOOD

Of the three existing farmhouses on the site only one has been surveyed by the County as part of the historic sites survey conducted in 1991. The middle parcel of the site is historically known as Landsdale Farm (File # F-7-77). The house was constructed in 1813

and consists of a wood frame and stone 2-story structure. When last surveyed in 1993 the house was unoccupied and in fair to poor condition.

E. SUMMARY

Existing residential development in the neighborhood has been on well and septic with densities of one dwelling unit per acre or less. Proposed subdivisions between Ed McClain Road and Maryland Route 75 will be developed on public water and sewer with net densities in the range of 2 – 3 dwelling units per acre compared to the net density of 4.1 dwelling units per acre for this project. Since this property is located at the periphery of the growth area it would not directly adjoin proposed well and septic development that would be at much lower densities. A small number of existing residences directly adjoin the site and will be adequately buffered by open space. The proposed PUD classification is consistent with proposed development to the east. The proposed PUD reclassification is compatible with existing and proposed development.

5. **RECOMMENDATION OF THE FREDERICK COUNTY PLANNING COMMISSION:** The Frederick County Planning Commission recommended approval of the PUD Zoning Map Amendment Request R-02-1 with twenty-one conditions.
6. **RELATIONSHIP WITH THE PROPOSED AMENDMENT TO THE FREDERICK COUNTY COMPREHENSIVE PLAN:** This property is located within the Green Valley Community which is designated as a district community in the Urbana Region Plan. This property is designated for low density residential on public water and sewer. Adjoining properties to the south and west are designated Agricultural/Rural. Properties between Ed McClain Road and Maryland Route 75 are designated low density residential with water and sewer. This request for the PUD Floating Zone classification is consistent with the low density residential (water and sewer) land use plan designation. The proposed gross density of 2.8 dwelling units per acre is consistent with the 1 – 4 dwelling units per acre range for low density residential.

The Board adopts the one-mile neighborhood delineated in the Staff

Report.

Based on all the evidence submitted in this matter, the Board of County Commissioners determines that this project concept is both feasible and desirable. The Board finds that the proposal complies with all the purposes of the PUD classification and will further those purposes. The Board finds that this proposal is compatible with adjoining land uses and will have no significant adverse impacts. The Board finds that this proposal is in the public interest. The Board finds that the required conditions are related both in nature and extent to the impact of the proposed development. The Board establishes the maximum gross land use density as 2.8 dwelling units per acre, based on the ratio of the 1,100 proposed dwelling units on the 395.7 acre site.

The proposed PUD Floating Zone classification will be granted subject to the conditions stated below.

ORDINANCE

BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that for the reasons set forth above, Rezoning Case No. R-02-1 is hereby **GRANTED** for the reclassification of 395.7 acres of land, more or less (as delineated in the record), from the Agricultural classification to the Planned Unit Development (PUD) Floating Zone classification, subject to the following conditions:¹

¹ The term "applicant" as used in this Ordinance includes all present and future owners and developers of this property. These conditions run with the land.

1. A maximum of 1,100 age restricted dwelling units including 149 Moderately Priced Dwelling units ("MPDU's") may be constructed. The MPDU's will be constructed within the attached units section with 33% of the MPDU's delivered within each 33% of the project build out.
2. Phasing of the project shall permit 200 lots to be recorded per year with a previous year's unused allocation permitted to be carried into the following year.
3. The proposed golf course, on the portion of the property remaining Agricultural, shall use best management practices concerning environmental protection and integrated pest management practices.
4. Covenants shall restrict 100% of the units to be age restricted per Federal Fair Housing Act and Housing for Older Persons Act of 1995, with further limitation on the minimum age of permanent residents being 19 years of age. These covenants shall be recorded prior to the recording of the first subdivision plat. The covenants shall be recorded and made a part of the title for each dwelling unit, and every property owner within the community (and the community association) shall be beneficiaries of the covenants with ability to enforce them through administrative or judicial proceedings. These covenants are to be reviewed by the County Attorney's Office to ensure that the PUD floating zone classification is invalid if these covenants are not recorded and do not restrict age as proffered in a binding and enforceable manner. The required biannual federal surveys (*24 cfr 100.307*) shall be made available to the County for its review and records.

5. Ed McClain Road shall be improved/relocated from the project's main entrance to MD 80 prior to the occupancy of any dwellings.
6. The west side of Ed McClain Road from the project entrance north to the end of the project's road frontage shall be improved to Local street standards with a ditch 21 feet from the existing road centerline.
7. Access from the project site shall preclude left-turn (northbound) movements onto Ed McClain Rd. to discourage traffic from traveling northbound to access MD 75.
8. The applicant shall construct the relocated MD 75 at the MD 80 intersection per the alignment on the Urbana Region Plan and at a logical transition point to MD 75 (or 80) (see applicant's Exhibit B). The final alignment and design shall be subject to approval by the State Highway Administration.
9. Building permits for no more than 750 dwelling units may be issued before the MD 75 relocation is constructed and open to service.
10. Building permits for no more than 500 dwelling units may be issued before the collector road between Ed McClain Rd. and MD 75 is constructed.
11. The applicant shall provide an appropriate guarantee/bond (as approved by the County Attorney) for the construction of relocated MD 75 prior to the recording of the 400th lot.
12. At the time of Phase II review the Planning Commission and the applicant shall determine which internal streets should be public vs. private roads.

Consideration for a second access to the site shall also be made at the time of Phase II review.

13. Bicycle and pedestrian access to adjoining developments and the commercial area at the MD 75/80 intersection shall be provided via sidewalks and trails within the project.

14. The applicant shall work with the County to determine appropriate design elements that would make the development transit serviceable.

15. All construction traffic for the project shall be prohibited from using Ed McClain Rd. north of the proposed collector that would connect Ed McClain Rd. to MD 75.

16. The panhandle portion of the property identified as lots 9 and 10 shall not be used for access to the project or park.

17. The applicant shall dedicate 80-100 acres of parkland to the County for a special use park along Bush Creek. Title to this parkland property shall be transferred to the County upon the recordation of the first lot in this PUD. During the phase II review of the PUD the Planning Commission shall determine appropriate public access to the park and the applicant shall provide this public access to the park. Any internal trails/paths within the project shall allow for public access and provide connections to the Bush Creek park/corridor.

18. The applicant shall contribute \$250 per dwelling unit to be paid before the issuance of each building permit. The County shall place these funds in a segregated account. The funding shall be contributed to the County for operational or

capital needs for the volunteer fire, rescue, or ambulance company serving this site or towards another suitable service or facility as agreed upon jointly by representatives of the applicant and the County after seeking community input.

19. The applicant shall also dedicate a 3-5 acres public use site for future use by the County. The site shall be on property controlled by the applicant.

20. No building permits shall be issued until the Bush Creek Interceptor Middle Phase sewer line is available for service to the project.

21. No building permits shall be issued until the water line connection is made to the project.

AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD, that
the Zoning Administrator is hereby authorized and directed to make the appropriate
change on the Zoning Map showing this reclassification, with conditions, as indicated
above.

The undersigned hereby certify that this Ordinance was approved and adopted
on the 24th day of June, 2004.

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

By: Michael L. Cady
Michael L. Cady, Vice President

John R. Lovell, Jr.
John R. Lovell, Jr.

Jan H. Gardner
Jan H. Gardner

ATTEST
Douglas D. Browning
Douglas D. Browning
County Manager

Bruce L. Reeder
Bruce L. Reeder

Commissioner John L. Thompson, Jr. voted against the proposed PUD
Floating Zone classification.